

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark  
Application Serial No. 78/229,875  
Mark: MESSAGE IN A BOTTLE

GOLD SHELLS, INC.,  
a California corporation,  
Opposer,

v.  
KEITH CANGIARELLA,  
Applicant.

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In the Matter of Trademark  
Registration No. 2,243,269  
Mark: MESSAGE IN A BOTTLE

KEITH CANGIARELLA,  
Petitioner,  
v.  
ROGER ROJAS,  
Respondent.

**TTAB**

Opposition No. 91162780 and  
Counterclaim for Cancellation

**MOTION TO REOPEN DISCOVERY PERIOD AND**  
**EXTEND TRIAL SCHEDULE**

Opposer Gold Shells, Inc., hereby moves the Trademark Trial and Appeal Board for a reopening of the discovery period and extension of the trial schedule in the present opposition pursuant to Trademark Manual of Examining Procedure Section 509.01(b)(1) and Fed.R.Civ.P. 6(b). Opposer submits that its failure to obtain the necessary discovery during the original discovery period, which closed on September 30, 2005, was due to excusable neglect for the reasons shown below.



On June 29, 2005, Opposer's counsel served Opposer's interrogatories on Applicant. On August 12, 2005, Applicant's counsel served a response on Opposer's counsel, declining to answer any of the interrogatories. On September 17, 2005, Opposer's counsel made an attempt to informally resolve the dispute, but Applicant still declined to answer the interrogatories. Opposer then timely filed a motion to compel answers on November 23, 2005. In the motion, I stated, "Discovery ended in this proceeding on September 30, 2005. Opposer's testimony period is soon to begin. I need Applicant's answers to Opposer's interrogatories. I ask that the Board issue an order compelling a full response by Applicant to Opposer's interrogatories."

On January 10, 2006, I received by mail a ruling from the Trademark Trial and Appeal Board denying the motion to compel answers on the basis that the number of interrogatories, counting subparts, exceeded 75 and therefore was in violation of Trademark Rule 2.120(d)(1).

I believed, in good faith, that the interrogatories I submitted were less than 75 in number, counting subparts, and therefore were within the cited trademark rule. I was surprised by the Board's ruling to the contrary. Though I was timely in filing my motion to compel on November 23, the discovery period had already closed on September 30, so this was not within my reasonable control. Under these circumstances, I ask that the Board reopen the discovery period for the purpose of my serving revised interrogatories to Applicant, clearly in compliance with the cited trademark rule, so that I can obtain Applicant's answers. During the discovery

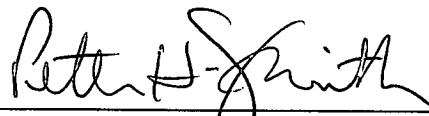
period, I fully answered the interrogatories served on me by Applicant's counsel, and I believe that the spirit of federal discovery requires that I have the opportunity to receive the same type of discovery from Applicant.

Applicant will in no way be prejudiced by the reopening of the discovery period for this purpose. The Board has already noted in its January 3 ruling that there was no evidence of bad faith on my part.

Trial dates were reset with the Board's ruling of January 3, 2006. If the Board reopens the discovery period, these dates should again be reset to accommodate the new discovery period. However, since the testimony period for the plaintiff in the opposition is not set to close until February 28, 2006, there is presently time to include a new 30-day discovery period and reset the other dates without a significant delay to the entire proceeding. No lengthy delay is sought, and there will be no significant impact on the proceeding.

Dated: January 12, 2006.

Respectfully submitted,



PETER H. SMITH

Attorney for Opposer Gold Shells, Inc.  
1535 J Street, Suite A  
Modesto, CA 95354  
(209) 579-9524

*Certificate of Service*

I hereby certify that a copy of the foregoing MOTION TO REOPEN DISCOVERY PERIOD AND EXTEND TRIAL SCHEDULE was transmitted to Stephen L. Anderson, Esq., by facsimile, (951) 694-1876, and by first-class mail, postage prepaid, to Stephen L. Anderson, Esq., Anderson & Associates, 32605 Highway 79 South, Suite 208, Temecula, California 92592, attorney for Applicant, on January 12, 2006.

Dated: January 12, 2006.

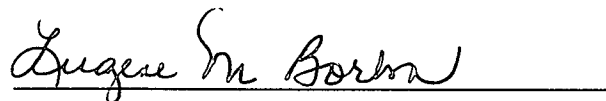
  
LUGENE M. BORBA

**CERTIFICATE OF EXPRESS MAILING**  
**UNDER 37 CFR §2.198**

Mark: MESSAGE IN A BOTTLE  
Serial No.: 78/229,875  
Opposition No. 91162780  
Name of party filing paper: Gold Shells, Inc.  
Type of paper being filed: Motion to Reopen Discovery Period and Extend Trial Schedule

Express Mail Mailing Label Number: EQ 041849437 US  
Date of Deposit: January 12, 2006

I hereby certify that the above-identified motion to reopen discovery period and extend trial schedule, which is attached, is being deposited on January 12, 2006, with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §2.198 in an envelope addressed to: U.S. Patent & Trademark Office, Trademark Trial & Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451.

  
Lugene M. Borba  
Date: January 12, 2006